Supreme Court, U.S.
FILED

952029 JUN 14 1996

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

AUGUSTUS J. SIMMONS,

Petitioner,

v.

CONNECTICUT DEPARTMENT OF TRANSPORTATION, J. WILLIAM BURNS, COMMISSIONER,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

AUGUSTUS J. SIMMONS,
Petitioner
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Question of whether the arbitrary, capricious usurping of federal-aid highway easements without due process or just compensation constitutes a "federal question" within jurisdictional statute 28 U.S.C.A. § 1331(a); U.S.C.A. Constitutional Amendments 5, 14, § 1.

[In relevant part, this economic coercion action is based upon the Connecticut Highway Department widening Route #20 in the Town of East Granby, Connecticut, in the environs of Bradley International Airport, from two lanes to four lanes, acquiring all necessary easements on both sides of the highway – with the exception of plaintiff – and compensation denial was based on an unrelated, unresolved, distinctly separate taking of airport-related real property by federal and state agencies, for which no compensation has been paid, that has been previously petitioned to the United States Supreme Court under #92-1762; #94-6156 for failure to comply with uniform land acquisition procedures and, remains unresolved.]

PARTIES TO PROCEEDING

Petitioner:

Augustus J. Simmons, Landowner

Respondent:

Connecticut Department of Transportation
Highway Division
Arnold K. Shimelman, Assistant Attorney General
2800 Berlin Turnpike
P. O. Box 317546
Newington, CT 06131-7546

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Augustus J. Simmons, respectfully prays a writ of certiorari issue to review the arbitrary and discriminatory denial of due process and payment of just compensation for a "highway right-of-way," usurped for the U.S. Highway #20 improvement program from two lanes to four lanes by the Highway Division of the Connecticut Department of Transportation.

OPINION BELOW

The District Court order requiring plaintiff to pay sanctions to the State of Connecticut and to the United States dated January 25, 1996 is printed at Appendix *A*, infra, and the judgment of the District Court dated January 29, 1996 is printed at Appendix *B*, infra, and plaintiff's reply to order dated January 25, 1996, submitted on February 9, 1996 is printed at Appendix *C*.

The Second Circuit, Court of Appeals sanction letter and attached prior order imposing $2,000.00 and $5,000.00 fines against plaintiff, dated February 22, 1996 is printed at Appendix *D*, infra, and plaintiff's reply to sanctions letter of 2/22/96, submitted on March 5, 1996 is printed at Appendix *E*.

The Second Circuit, Court of Appeals docketing letter #96-7336 dated April 8, 1996 is printed at Appendix *F*, and civil appeals scheduling order #1 dated April 9, 1996 is printed at Appendix *G*, and the letter from Second Circuit, Court of Appeals dated April 17, 1996, vacating

the scheduling order of April 9, 1996 is printed at Appendix *H*, from which the petition for writ of certiorari is respectfully requested.

STATEMENT OF JURISDICTION

The letter of the United States Court of Appeals for the Second Circuit, vacating the previously issued scheduling order #1, docket #96-7336 of April 9, 1996 was filed on April 17, 1996.

This court's jurisdiction is invoked pursuant to the authority granted in 28 U.S.C. § 1331(a)(1964) and, under the Fifth Amendment to the Constitution of the United States, Section Four, as made applicable to the states through the Fourteenth Amendment, Section One.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V, Constitution of the United States " . . . nor shall private property be taken for public use, without just compensation."

Amendment XIV, Constitution of the United States " . . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, P.L. 91-646, Sections

§§ 221(b), 305; as amended P.L. 100-17, Title IV §§ 417, 418, April 2, 1987.

REASONS FOR GRANTING THE WRIT

1. The opinion and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court in the arbitrary, discriminatory and malicious confiscation of a highway right-of-way without due process, without just compensation.

Where federal highway regulations were complied with in all respects with "several" private property owners for improving highway Route #20 from two lanes to four lanes, on both sides of the highway, EXCEPT ONE – THE PLAINTIFF, such isolated, intentional, malicious deprivation of a 14th Amendment constitutional safeguard is police power and bad faith at its worst.

Where the failure to compensate for usurping of real property for highway purposes is done with the sole intent of imposing economic coercion and hardship against plaintiff, in lieu of compliance with 14th Amendment constitutional requirement of just compensation, such atrocious behavior and unconstitutional *modus operandi* went by the board – centuries ago.

2. **The opinion and actions of the courts below reflect a widespread conflict with other jurisdictions, the United States Constitution and this court in the imposition of UNWARRANTED sanctions against plaintiff for a servitude imposed upon plaintiff by the federal agency, Federal Aviation Administration, for navigational instrumentation upon private property for airport purposes – *without the payment of one (1) dollar by the federal or state agency for the servitude imposed,* then transform, transgress the sanctions to an unrelated highway action as a plea against paying mandatory compensation.**

Where the issue of sanctions by the District Court and the Appellate Court was addressed with a letter to the District Court on February 9, 1996, printed at Appendix C, and where a "corrupt practices" letter was addressed to the Second Circuit on March 5, 1996, printed at Appendix E, and to date plaintiff has not been paid one (1) dollar in an airport case that dates back to 1964, the sanctions against plaintiff to pay the United States government and the State of Connecticut for exercising a servitude upon plaintiff – without paying one dollar for the privilege – and – extend such sanctions to a highway action to avoid payment of compensation – makes a mockery of justice.

3. **The Second Circuit imposition of sanctions is in direct conflict with a – reported – decision of this same court in 1973, 472 F2d 509, wherein the facts remain the same, namely, no proceedings instituted nor any compensation paid.**

CONCLUSION

For these reasons, a writ of certiorari should issue to review the opinion of, vacating of scheduling order #1, of the Second Circuit Court of Appeals on this unconstitutional seizure.

Respectfully submitted,

AUGUSTUS J. SIMMONS,
Petitioner
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

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APPENDIX A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS,	:	
Plaintiff,	:	CASE NO. 3:95CV2198
V.	:	(RNC)
J. WILLIAM BURNS, COMMISSIONER,	:	
Defendant.	:	

ORDER

This matter is before the court on defendant's motion to dismiss [doc. #6].

Defendant alleges that plaintiff has failed to pay monetary sanctions imposed by the Second Circuit in *Simmons v Hinson*, No. 94-6156, (2d Cir. Feb. 23, 1995) (requiring plaintiff to pay $5,000 to the Clerk for distribution to the appellees) and by Chief Judge Dorsey in *Simmons v Frankel*, No. 2:92CV00395 (PCD) (D.Conn. July 8, 1992) (requiring plaintiff to pay $1,000 to the State of Connecticut and $1,000 to the United States), *aff'd*, No. 92-6208 (2d Cir. Feb. 23, 1993). In his memorandum in opposition to the motion to dismiss, plaintiff does not contend that the sanctions have been paid. Instead, he argues that the orders requiring him to pay sanctions were "misdirected."

Plaintiff should not be permitted to pursue this action, which involves the same subject matter as the

previous actions, unless and until he has paid the sanctions imposed by the Second Circuit and Chief Judge Dorsey. See e.g., *Schiff v Simon & Schuster, Inc.*, 766 F.2d 61, 62 (2d Cir. 1985); *Wrenn v Sullivan*, 1991 WL 50083 (N.D.N.Y. 1991); *World Athletic Sports Corp. v Pahlavi*, 267 F.Supp. 160 (S.D.N.Y. 1966).

Accordingly, the motion to dismiss is granted. The clerk is directed to close the case without prejudice to reopening in the event plaintiff presents receipts or similar documents proving that he has fully paid the sanctions previously imposed by the Second Circuit and Chief Judge Dorsey. Plaintiff's time to apply for reopening based on such proof will expire on March 1, 1996.

So ordered.

Dated at Hartford, Connecticut this 25th day of January, 1996.

/s/ Robert N. Chatigny
Robert N. Chatigny
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS,	:	
	:	
v.	:	CASE NO.
J. WILLIAM BURNS,	:	3:95CV-2198(RNC)
COMMISSIONER	:	

JUDGMENT

This action having come on for consideration of the defendant's motion to dismiss before the Honorable Robert N. Chatigny, United States District Judge and,

The Court having considered the full record of the case including applicable principles of law, and having filed an Order, granting the motion, it is therefore,

ORDERED, ADJUDGED and DECREED that the judgment be and is hereby entered in favor of the defendants.

Dated at Hartford, Connecticut, this 29th day of January, 1996.

KEVIN F. ROWE, Clerk

By /s/ Robin D. Tabora
Robin D. Tabora
Deputy in Charge

APPENDIX C

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Augustus J. Simmons, Plaintiff	:	February 9, 1996
v.	:	Case No. 3:95CV2198 (RNC)
J. William Burns, Commissioner	:	

To: Hon. Robert N. Chatigny
United States District Judge

PLAINTIFF'S REPLY TO "ORDER" DATED JANUARY 25, 1996

Plaintiff responds to the *"misdirected"* order as follows:

1. The plaintiff seeks to enforce what he maintains is a clear legal right under the Fourteenth Amendment to the United States Constitution not to be deprived of his property without due process of law and that the acts of the defendant constituted such a deprivation.

2. Said highway action (3:95CV2198) is independent of and dissimilar to other encroachments by state and federal agencies, namely, the Federal Aviation Administration and the State of Connecticut in a compact to acquire satisfactory property interests on a parcel designated as Parcel "C" (5.97 acres) for federal navigational instrumentation dating back to 1964. Also, the encroachment on a parcel designated as Parcel "A" (6.7 acres) by the Army Corps of Engineers on behalf of another federal

agency, Air National Guard, dating back to February, 1991.

3. The District Court is a court of limited jurisdiction "[a]nd the fair presumption is that a cause is without its jurisdiction till the contrary appears." *Turner v President, Directors and Company of the Bank of North America.*

Plaintiff respectfully differs with the *"Cabranes Court"* in that it is not, was not, empowered to enforce any settlement agreements, claimed judgments, decrees, waste paper, unless the agreement had been approved and incorporated into an order of the State Court. See *Fairfax Countywide Citizens v Fairfax County,* 571 F2d 1299 (1978).

A State Court obtains jurisdiction of the action and of questions concerning the garnishment when return of process is made to that court. *I. E. Stephenson,* Conn. Civil Procedures, at 67; see also *Lynch v Household Fin. Co.,* 405 U.S. 538 at 557.

Where there was, *NO NOTICE, NO PROCESS OF SERVICE, NO RETURN OF PROCESS TO THE CLERK OF THE COURT OF COMPETENT JURISDICTION,* and the lack of subject matter jurisdiction was specifically addressed to the Superior Court, Judge Dupont, A., on June 7, 1982, by the *Attorney General's Office,* it follows that there is not any special statutory grant of jurisdiction empowering the District Court (Cabranes, J.) to take cognizance of the dispute and – render sanctions.

Where the State Court lacks jurisdiction of the subject matter or of the parties, the Federal Court acquires none. *Minnesota v United States,* 305 U.S. 382.

4. Where the (private parties), acting in concert with the Connecticut Department of Transportation, knowingly, deliberately, set the federal statute at naught, 42 U.S.C. § 4655, and where the regulations promulgated in accordance with the mandate of "the Act" – making benefits available to persons displaced by federal or federally assisted state projects was intended to extend benefits uniformly "as a result of" federal or federally assisted programs, the rendering of sanctions must be *REDIRECTED* against those parties (Asst. Atty. Gen. Shimelman) who mislead and submit incomplete and false information to the court. *City of Columbia, S.C. v Costle*, 710 F2d 1009 (1983); *Abdo Ahmad Naci v United States*, 751 F2d 826 (1985); *Bethune v United States*, 376 F. Supp. 1074 (1972); *Laraza Unida v Volpe*, 337 F. Supp. 221 (1971).

5. Where the clearing of encumbrances on the Land Records cannot be judicially enforced by the State Court, the Federal Court, or any court of competent jurisdiction, and the court has not paid the fundamental constitutional requirement of just compensation against a void decree and for lack of jurisdiction, and, to add insult to injury, the owner must continue to pay high interest rates against encumbrances with out-of-pocket money so that the federal agency, F.A.A., can continue to fly the planes in and out of Bradley Field with the sophisticated instrumentation on plaintiff's private property, and in the highway action (3:95CV2198) continue to usurp the easement that was never acquired, makes a mockery of the due process and just compensation clauses of the U.S. Constitution, in addition to a complete "thumb your nose" attitude of Title III of P.L. 91-646, wherein the court doles out sanctions in lieu of equal protection under the law.

6. The federal legislation P.L. 91-646 (1971); as improved upon by President's Memorandum of February 27, 1985, 50 Fed. Reg. 8953; as amended by Public Law 100-17 (1987) was made mandatory on *ALL* states, no later than July 1, 1972 (Sec. 221) would be more appropriate for a target of sanctions wherein in the year of 1996 they still have not complied with a Grant Agreement entered into in 1955.

7. To further – illuminate – the misdirection of the "off the wall" sanctions, plaintiff submits certified copies of Vol. 59, p. 661, 662 of Town of East Granby, Connecticut Land Records that were illegally, unlawfully placed upon the Land Records in violation of several Connecticut statutes, and, more particularly, in violation of Title III of the Uniform Real Property Acquisition Act *"regulations"* promulgated to insure "uniform" procedures.

The fraudulent transcending, transforming of plaintiff's tort action into an eminent domain action (Simmons v Wetherall #163875), superimposing the Connecticut Department of Transportation at page 662, where the owner, Augustus J. Simmons, was intentionally and in bad faith, *EXCLUDED* from the citation, where the listed parties were never given notice, where there was no return of service, notwithstanding a return day of the first Tuesday of July, 1978, where there were no appraisals to establish fair market value that are mandatory under both state and federal law, prior to making an offer, where there is an unconstitutional "backdating to November 12, 1964 at Vol. 59, p. 624, made with the documented comment in the transcript of 12/13/77 to avoid legislation enacted after 1964, notwithstanding that an attempted "closing" on April 19, 1978 plaintiff

informed the court reporter present in the "private offices" of Attys. Rogin-Hirtle that *"there will be no god-damn closing with a dating back to 1964"* resulting in another encumbrance on the Land Records on April 20, 1978 by private counsel bringing suit for a fee at Vol. 59, p. 419 withdrawing on April 19, 1978, yet, encumbering the property on June 2 and June 5, 1978 in police power fashion wherein the court of competent jurisdiction has not paid any compensation, cannot pay any compensation under the void decree – begs the question of propriety of sanctions, and, if so, not by shooting from the hip, particularly where in proceedings before Hon. Jose A. Cabranes on February 4, 1982, the court was made aware of the very irregular proceedings as follows beginning on page 32, Docket No. H-81-7788:

> Mr. Feingold (A.A.G.): And that brings me then to the part of the most recent Affidavit that was filed this morning with all counsel, hand delivered to the Attorney General's office by Mr. Simmons in support of his claim here.
>
> The Court: You are referring to the document entitled, "Affidavit, Conflict of Interest, Conspiracy, Fraud," filed February 4, 1982, at 9:35 a.m.
>
> Mr. Feingold: Right. Yes.
>
> The allegations made in this Affidavit are very, very serious. They are attacking the practice of law by certain members of the profession who are licensed to practice in the State Courts and in the United States Federal Courts.

It is true that if fraud entered into the consent that Mr. Simmons, on the face of the stipulation, gave, it could vitiate that Agreement. It could also vitiate the Judgment.

And I neglected to cite to Your Honor, and I apologize for this omission, but I would now cite the Connecticut case – and for Mr. Simmons' benefit, with Your Honor's permission, may I hand him a copy of the Connecticut decision that I am now going to cite?

The Court: Please, go ahead.

Mr. Feingold: Mr. Simmons. . . . I omit a copy for the U.S. Attorney, Mr. Kelly, because I think he could find it. We are citing the case of Kenworthy vs. Kenworthy in 180 Conn. 129, released by the Connecticut Supreme Court in March of 1980. It is a per curiam opinion. The pertinent parts of this opinion are found on page 131. And with the Court's permission, it's quite short, I'll leave out citations, but it's important that I read the statements. "It is a well-established general rule that even a judgment rendered by the court upon the consent of the parties, which is in the nature of a contract to which the court has given its approval, can subsequently be opened without the assent of the parties if it is shown that the – (at p. 34) stipulation, and hence the judgment, was obtained by fraud, in the actual absence of consent, or by mutual mistake.

"The power of the court to vacate a judgment for fraud is regarded as inherent and independent of the statutory provisions authorizing the opening of judgments; hence judgments obtained by fraud may be attacked at any time."

> And I submit, in deference to the court and in fairness to Mr. Simmons, that the state court forum is available to him for him to challenge the validity of the stipulated judgment. And if he is successful, I will be able to go on with my appeal in the Connecticut Supreme Court, which I unfortunately had to withdraw. And he will get a new trial of the merits of his constitutional issues, which originally had claimed for the jury, and – I hope to do so again.
>
> Thank you, Your Honor.
>
> The Court: Thank you.

8. Following the representations made in Federal Court on February 4, 1982, the Attorney General's Office intent to stop payment of compensation to lienholders who must be paid before the owner (C.G.S. 48-21), was successful in Superior Court on June 7, 1982 (notwithstanding that the Connecticut Supreme Court had rendered Simmons v Wetherall, 180 Conn. 587, May, 1980) with the excerpt from transcript (6/7/82 – p. 17):

> "I now direct Your Honor, and invite Your Honor's attention to another element of jurisdiction in the entire matter of Simmons v Wetherall. I might say that whenever I call Your Honor's attention to the question of jurisdiction, in accordance with the law of the state, if lack of jurisdiction is brought to Your Honor's attention, I mean subject matter jurisdiction, no matter in what form or in what way, Your Honor cannot proceed on any of the proceedings until you resolve the issue of subject matter jurisdiction. If per chance the jurisdiction question is interwoven now with many other prior motions

> that have not been acted upon, and it has happened, that it arises on the motions of a claimed predictor of Mr. Simmons, it does not matter so long as this court, the question of jurisdiction is called to Your Honor's attention."

From the same transcript, (6/7/82 – p. 26) relative to necessary parties before the court is the representations of Attorney Walter Bass:

> First of all, I would object to Mr. Feingold at this time questioning the jurisdiction of the court to hear this case. Secondly, Your Honor, in Mr. Feingold's recitation that he gave Your Honor, this morning, I forgot which paragraph he referred to in Judge Shapiro's decision, there was to be a citation issued so that all people would come forth and present their claims. I have a right to inform the court that in the citation, my two clients were listed under the care of my office. I will state to the court that I have never been served any citation nor has my client ever been served with any kind of a citation to give us any notice to come in to determine what our priorities are in this matter."

Compensation was *DENIED* following the above representations by Judge Dupont, A.

9. There remain *MULTIPLE* encumbrances against the property – today, 1996, and where the intent under a Grant Agreement #9-06-009-5708 was crystal clear, that pursuant to 14 C.F.R. § 152.3, "Title free and clear of any reversionary interest, lien, easement, lease or other encumbrance" must be secured by the state agency, shows clearly – illuminates – how cockeyed and MISDIRECTED the aim of sanctions – against the landowner,

who must continue to pay out-of-pocket dollars so that the federal agencies, F.A.A., Air National Guard, can continue to fly the airlines and military aircraft in and out of Bradley Airport without the consideration of *ONE* dollar.

10. Plaintiff does not intend to comply with a March 1, 1996 deadline "Order" for the reasons outlined in Plaintiff's Reply to Order dated February 9, 1996 and requests the Honorable Chatigny to reconsider and rescind the Dismissal.

Due to time constraints and the F.R.C.P., plaintiff has filed a Notice of Appeal to the Second Circuit this 9th day of February, 1996.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

I, Augustus J. Simmons, hereby certify a copy of Plaintiff's Reply to "Order" dated January 25, 1996, with Exhibits, has been sent, postage prepaid, first class, this 9th day of February, 1996 to:

Arnold K. Shimelman
Assistant Attorney General
2800 Berlin Turnpike
P. O. Box 317546
Newington, CT 06131-7546

Clerk, U.S. District Court
450 Main Street
Hartford, CT 06106

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURTHOUSE
40 FOLEY SQUARE - ROOM 1702
NEW YORK, N.Y. 10007

GEORGE LANGE III
CLERK

February 22, 1996
Re: Simmons v. Burns
(95-cv-2198)

Augustus J. Simmons
P.O. Box 1
Windsor, CT 06095

Dear Mr. Simmons,

On February 23, 1993, this Court entered an order under *Simmons v. Frankel,* 92-6208, affirming the district court's order dismissing *sua sponte* your complaint and imposing $2,000 in fines. A copy of this order is attached for your information.

On February 23, 1995, this Court entered an order under *Simmons v. Hinson,* 94-6156, ordering you to pay the Clerk of the Court the sum of $5,000 within ten (10) days of the issuance of this order. Failure to comply would subject you to contempt charges.

On February 9, 1996, a Notice of Appeal was filed in the above entitled District Court case. You are hereby notified that within fifteen (15) days of the date of this letter, it will be necessary for you to submit written proof that the previous sanction ordered by the Court has been satisfied in full. Failure to submit proof may result in the

dismissal of the above referenced appeal for non-compliance with the order of this Court.

Sincerely,

George Lange III, Clerk
by:
/s/ Illegible
Deputy Clerk

CTDC
92 CV 395
Dorsey

JMW

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 23rd day of February, one thousand, nine hundred and ninety three.

Present:

Honorable John M. Walker, Jr.,
Honorable Joseph M. McLaughlin,
Circuit Judges,

Honorable Charles L. Brieant,
*Chief District Judge.**

---

* Chief Judge Charles L. Brieant, United States District Court for the Southern District of New York, sitting by designation.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

v.

EMIL H. FRANKEL, Commissioner of Transportation, BARRY L. HARRIS, Administrator, Federal Aviation Administrator, HENRY J. HATCH, General, Chief Engineer U.S. Army Corps. of Engineers, JOHN J. BARTIZEK, District Clerk, Metropolitan District Commission, UNITED STATES OF AMERICA, STATE OF CONNECTICUT, JOHN J. COLLINS, Lt. Col., Administrator, FAA,

Defendant-Appellees.

ORDER
No. 92-6208

(Filed
Feb. 23, 1993)

Appeal from the United States District Court for the District of Connecticut.

This cause came to heard on the transcript of record from the United States District Court for the District of Connecticut (Dorsey, *J.*) and was argued by appellant, while counsel for appellees relied on their submissions.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the order of said district court be and it hereby is AFFIRMED, and appellant is assessed double court costs.

Augustus J. Simmons, *pro se,* appeals from an order of the United States District Court for the District of

Connecticut (Dorsey, *J.*), dismissing his complaint *sua sponte* and ordering Simmons to pay $2000 in fines.

On June 5, 1992, Simmons brought an action, pursuant to 42 U.S.C. § 1983, alleging various constitutional violations arising from Connecticut's acquisition of land owned by Simmons. The district court concluded that Simmons was attempting to reassert federal constitutional and statutory claims that were fully adjudicated in prior proceedings in violation of an injunction issued against him, and dismissed his complaint *sua sponte* on July 14, 1992. The court also ordered Simmons to pay fines in the amount of $1000 to the State of Connecticut and $1000 to the United States.

The long history of this litigation began in 1964, when the State of Connecticut attempted to condemn property in East Granby, Connecticut, then owned by the Simmons's family, to expand what is now the Bradley International Airport. Simmons filed various state and federal actions, later consolidated in Connecticut Superior Court, alleging that the State illegally occupied portions of his land and challenging the State's attempt to gain title to the property. On January 4, 1978, a judgment was entered, pursuant to a stipulation between the parties, providing that the State would take title to certain parcels of Simmons' land, in return for which the State would pay Simmons $385,000. The stipulation further provided that the "judgment entered in this matter [shall] be a full and final settlement between the parties of any and all claims contained in the above consolidated cases." However, six months later Simmons moved to open the judgment claiming ineffective assistance of counsel. This request was denied and the denial was affirmed on

appeal. *Simmons v. Wetherall,* 180 Conn. 587 (1980) (per curiam).

Not dissuaded by the final judgment granting title of the disputed real property to the State of Connecticut, Simmons continued to pursue the issue. Simmons filed seven state and five federal proceedings after the 1978 stipulation was certified. Then in a 1988 order, Judge Cabranes enjoined Simmons from filing "any state or federal claims in any federal court against any of the defendants named in the complaint in this lawsuit if such lawsuit related to his alleged ownership" of the disputed real property. Affirming Judge Cabranes's order in all respects, this Court warned that any violation of that injunction could be punished as contempt of court and imposed double court costs against Simmons. *Simmons v. Burns,* No. 88-6093 (2d Cir. Oct. 5, 1988) (unpublished summary order).

Despite this Court's attempt to stem the flow of vexatious litigation by Simmons, we are confronted once again with an attempt by him to litigate a matter barred by res judicata. Notwithstanding Simmons's attempt to circumvent the injunction by changing the named defendants, the instant complaint clearly relates to Simmons's ownership of the East Granby land. Thus, Simmons has violated Judge Cabranes's injunction. Furthermore, even without the injunction, Judge Dorsey's dismissal of the complaint *sua sponte* would be affirmed based on res judicata grounds.

Both the state and federal defendants have asked the district court to impose sanctions on Simmons in order to deter him from continuing his attempts to reopen this

litigation, *Pro se* litigants are subject to sanctions under Fed. R. Civ. P. 11. *See Maduakolam v. Columbia Univ.*, 866 F.2d 53, 56 (2d Cir. 1989). Furthermore, this Court has not hesitated to impose sanctions on *pro se* litigants when they become particularly vexatious. *See Sassower v. Field*, 973 F.2d 75 (2d Cir. 1992) (upholding sanction of $93,350 against vexatious plaintiff).

The district court's order dismissing *sua sponte* Simmons's complaint and imposing $2,000 in fines is hereby AFFIRMED. Furthermore, we hereby assess double court costs against Simmons pursuant to Fed. R. App. P. 38.

/s/ John M. Walker, Jr.
Hon. John M. Walker, Jr.,
U.S.C.J.

/s/ Joseph M. McLaughlin
Hon. Joseph M. McLaughlin,
U.S.C.J.

/s/ Charles L. Brieant
Hon. Charles L. Brieant,
U.S.D.J.

APPENDIX E

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

ATTN: GEORGE LANGE III, CLERK MARCH 5, 1996

RE: *SIMMONS V BURNS* (95 CV 2198)

PLAINTIFF'S REPLY TO SANCTION
LETTER DATED FEBRUARY 22, 1996

1. Plaintiff, Augustus J. Simmons, submitted a reply, *with exhibits,* dated February 9, 1996 to the attention of Hon. Robert N. Chatigny addressing sanctions in addition to a copy to Clerk, U.S. District Court, Hartford, CT, with the expectation that the Clerk's Office would transmit such reply and exhibits with the Notice of Appeal that was filed in timely fashion.

2. Plaintiff made it ultra clear in the last paragraph, (10), he does not intend to comply with a March 1, 1996 deadline in the District Court and for the obvious Constitutional deprivations, and *corrupt practices* associated with a (non-State Court purported Judgment) as further detailed in this Supplemental Memorandum, does not intend to comply within (15) days of letter dated February 22, 1996 from George Lange III, Clerk, U.S. Court of Appeals sanctions by the "Cabranes Court."

3. As a supplement to the lengthy paragraph 7 (Reply 2/9/96) Plaintiff adds an excerpt from Civil H-81-778 ("Cabranes Court") starting at page 25 wherein the Federal Aviation Administration, who have a *"POSSESSORY INTEREST"* in Plaintiff's Parcel "C" have not paid one (1) dollar for the servitude imposed upon the

landowner; have not paid one (1) dollar to its agent, Connecticut Department of Transportation, for the security fence enclosing Parcel "C", ordered erected by F.A.A. under threat of a $5,000.00 per day fine for nonperformance. The order should have been: *Pay the owner just compensation – FIRST*!!!

Starting at page 25:

Mr. Simmons: So I say I'm here on the exact same issue. Follow the A.A.D.A. You haven't followed it out.

Mr. Kelly (Asst. U.S. Atty.): Your Honor, I would comment only that the A.A.D.A., which I understand to be the Airport and Airway Development Act of 1970, that is codified at 49 U.S. Code, Section 1701 et seq., that the A.A.D.A. that Mr. Simmons refers to is a different statute than the one which I have briefed and that it, in fact, does not apply to the facts of this situation.

There was no expenditure of federal funds under the A.A.D.A. to permit the taking of any of the property involved in this case, to my knowledge. Therefore, without seeing the case that Mr. Simmons relies on, I would just submit that the A.A.D.A. as a separate statute concerning airport development does not apply to this action.

Mr. Simmons: Your Honor, I ask that the secretary give me an excerpt to that, because I'd like that statement that he just made – they have not participated in giving any money under the A.A.D.A. as far as Mr. Simmons is concerned. Am I quoting you fairly correct, counsel?

Mr. Kelly: Your Honor, it is my understanding that the land that's in question here, the parcels of land on which there may be certain instrumentation landing

system equipment was not obtained by funds provided by the F.A.A. under the A.A.D.A. That is my understanding of the situation.

As far as the rest of Mr. Simmons comments in response to my Motion To Dismiss, I would simply stand on the memorandum as we filed it.

The Court (Cabranes, J.): Fine, thank you very much. I will reserve decision on the Motion of the Federal Aviation Administration to dismiss this action.

4. There have been several "airport" cases around the country, but, the two more prominent that went to the United States Supreme Court were *United States v Causby*, 328 U.S. 256, involving low overflights rattling chickens in which the court ruled the government must pay the damages and *Griggs v Allegheny County*, 369 U.S. 84; 82 S. Ct. 53, involving noise and safety in which the court ruled the airport operator must pay damages.

In the case at bar, no damages, *NONE* have been paid by the government, by the airport operator, notwithstanding that the Docket *Simmons v Wetherall*, #163875, was a tort action with hearing dates (15) scheduled, but never complied with, consequently, the answer is before the court of why there is NO judgment before the court of competent jurisdiction, the Superior Courts of Connecticut.

5. Upon taking the oath as a District Court Judge, the Hon. Jose Cabranes was expected to uphold, honor, enforce federal laws as applicable to the case at bar.

The regulations promulgated pursuant to the Uniform Real Property Acquisition Act is "paramount federal

law" applicable to the case at bar, and, applicable to all 50 states, *Connecticut included.*

A statement of compensation, in writing, for real property acquisition for federal projects and/or federal-aid projects is mandatory under federal law (49 C.F.R. Part 24, Subpart B) and under state law (C.G.S. 8-129) to show that fair and just compensation be paid. Needless to say, this requirement for fair and just compensation, including damages, that requires appraisals before any statement of compensation can be submitted to the court, the owner, the Town Clerk, was never submitted to any court, yet, His Honor Judge Cabranes issues sanctions against this "zealous," "pertinacious" owner for challenging the "corrupt practices" of the "Rogin-Hirtle" law firm with a dismissal of them by Hon. Jose Cabranes.

6. One look, one glance at the *"CAPTION"* of the exhibit submitted to the District Court with reply of February 9, 1996 shows a *SIMMONS V WETHERALL,* #163875, land piracy that is unconstitutional and violative of every (federal and state) regulation imaginable, the Practice Book Procedures (F.R.C.P. and State) with the AMENDING, BENDING, CONTAMINATING, COMBINING, TRANSCENDING, TRANSFORMING, ADDING PARTIES TO A PRIVATE TORT ACTION, EXCLUDING THE OWNER, by private counsel "Rogin-Hirtle" *WITHOUT* filing any motions with the Clerk of the Court – to make sure that plaintiff-owner could not object in open court.

The rendering of a decision by the Connecticut Supreme Court under *Simmons v Wetherall,* 180 Conn. 587, without any notice or service to the owner and necessary

parties, without any "final" judgment – or – any other kinds of judgments by the Superior Court, without any proceedings whatsoever on the records of the Clerk of the Superior Court against *Simmons v Wetherall* #163875 is *NOT*, under any stretch of the law or imagination, a basis for SANCTIONS by the Federal Court (Cabranes, J.) or the State Court who attempted to play copy-cat (Judge Satter – A.A.G. Shimelman).

7. The Superior Court records show a *DENIAL* of compensation to private counsel (Rogin-Hirtle) on August 30, 1979 *BEFORE* the Supreme Court decision of May, 1980. Denial was based on the Clerk (Lucian Jachimovitz) calling attention to Hon. John Daly that – based on *Shelton v Wolthausen*, 80 C 599, the Superior Court had no authority to award compensation, for the reason there were *NO* proceedings before the court against which compensation can be paid.

The Superior Court records show a denial of compensation to lienholders Valente-Allaire, with exclusive liens on Parcel "C" (location of federal instrumentation) on July 7, 1982, *AFTER* the Supreme Court decision of May, 1980. Denial was based on the Atty. General's office (Feingold, V.) challenge of lack of subject matter jurisdiction by the Superior Court. (Dupont, A. Judge).

The Superior Court records show a challenge by the owner, Augustus J. Simmons, of Superior Court Judge Aronson, A., on December 23, 1991 to "sua sponte," create jurisdiction within himself to summon all lienholders and clear the land records as mandated by 14 C.F.R. 152.3. Lacking jurisdiction to proceed, Judge Aronson termed funds held by the court *ABANDONED*.

The Superior Court records show an attempt by the Superior Court to acquire jurisdiction of the case at bar with a *Dept. of Transportation v Diamond* creation, without a docket number on March 17, 1982, by Judge Dupont, A. and the subsequent abandonment of same in June, 1982.

8. Where "paramount federal law" prevails as in the case at bar and federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. *Bell v Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 777, 90 L. Ed. 939 (1946). The rendering of "Cabranes sanctions" to deny just compensation to plaintiff is an affront upon the United States Constitution – *specifically Art. V.*

9. The rendering of *Simmons v Wetherall*, 180 Conn. 587, by the Connecticut Supreme Court, referenced by the "Cabranes Court," is in DIRECT CONFLICT with the U.S. Supreme Court decision of *Standard Oil Co. v Missouri*, Vol. 32 at p. 409 that states: "If the action be for libel or personal tort, the court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the court is powerless to admit in the case the probate of a will . . . the judgments mentioned, given in the cases supposed, would not be merely erroneous, they would be absolutely void, because the court, in rendering them, would transcend the limits of its authority in those cases." (citations omitted)

10. Where the charge of *IMPROPRIETY, UNREASONABLENESS, CONDUCT EVINCING IMPROPER MOTIVES, BAD FAITH, CLEAR ABUSE OF POWER, PLAIN DISREGARD OF DUTY, THE AURA OF DIVIDED*

LOYALTY entered into plaintiff's tort action (*Simmons v Wetherall #163875*) and this was put on the doorstep of Hon. Judge Cabranes in Affidavit form on February 4, 1982 at 9:35 a.m. – and was dismissed via a summary judgment proceeding, it has been held that the appropriation of the property will be restrained if it be found that such was the character of the decision. *Water Commissioners v Johnson*, 86 Conn. 151, 159, 84 A 727.

11. To particularize in more detail the actual intent of purpose to defraud plaintiff started with plaintiff having to renegotiate a "contingency contract" from the customary 1/3 to 38% of damages due to "Salzman" having moved out of state was – mere window dressing. It was never the intent of "Rogin-Hirtle" to pursue damages and the 15 days scheduled back on April 5, 1977 for December 1977 and January 1978 were – put under the table.

The "got a settlement offer" phone call to plaintiff on December 8, 1977 by the "Rogin-Hirtle" law firm, without mandatory appraisals, without mandatory statements of compensation in writing, was in retrospect – a phoney-baloney slush fund to selfserve Attorneys Rogin-Hirtle, and, a flagrant, intentional violation of federal law 49 C.F.R. Part 24 – in direct violation of state law.

The "got a settlement offer" was used as a deceptive, devious, fraudulent tool to have plaintiff stipulate to withdraw two (2) federal court actions, Docket Numbers H-74-148 and #14806 that was remanded by the Second Circuit (472 F2d 509).

Said stipulations were drafted on December 12, 1977 prior to filing an appearance on December 13, 1977 and

had to be signed, *prior to – before* any offer would be divulged.

After plaintiff served a Dismissal, in writing, upon the Rogin-Hirtle law firm on December 23, 1977 for conduct that paragraph #10 describes only the tip of the iceberg, members of the firm tromped into federal court and withdrew the actions – knowing full well plaintiff was "backroomed" and would not deprive himself of federally protected rights.

12. On December 13, 1977 on a prearranged basis Atty. Rogin, Sr., in concert with Parskey, L. of the Supreme Court and Cohen, S. of the Superior Court "combine" cases on a sua sponte, fly-through, on-the-spot basis without filing any Motions with the Court as required by the Practice Book. The exercise of bypassing Practice Book procedures had a two-fold devious, malicious, and unethical purpose. First was to not permit plaintiff any opportunity to object in open court to the scheme, and, second, *Simmons v Parizek*, Docket # 162923, had already gone to Judgment on January 11, 1977 and any Motion filed with the Clerk of the Court to open a Judgment would require a filing fee, and, the Judgment being almost a year old, the Superior Court would not, could not combine a case that had already gone to Judgment. Judgment consisting of 30 trial days over a one year period was for rental of Parcel "C" for the years 1964-1969, plus an appraiser's fee and an award to the engineer. Docket # 199230 was intended to start with 1970 and continue until an adequate property interest was accomplished. The pattern and intent was *DEVIOUS* indeed. Don't pay that critter anything for the years that

the F.A.A. was maintaining a possessory interest. (Skin him alive – while he is still breathing.)

13. Plaintiff was told to report to Referee Shapiro on January 4, 1978 and did so with new counsel, Atty. Robert King of Vernon, Connecticut, who had some "Nuremburg Trial" experience, having told the Rogin-Hirtle law firm to take a L – O – N – G walk on a short pier on 12/23/77.

NO way was plaintiff going to be allowed to proceed with counsel of his choice and another fraudulent proposal (same technique – no appraisals – no statements of compensation – backdating) from the discharged attorneys was again going to be force-fed upon plaintiff. At this juncture in time one matter was for certain. That certainly, with the aura of divided loyalty and conduct evincing improper motives was that plaintiff *WOULD NOT* tender any deeds to Rogin-Hirtle, come hell or high water. Initiate another condemnation.

14. The *INTENT* in the case at bar was to acquire real property for a federal project as related in transcript page 4, (12/13/77):

The Court: All right. Is there anything else then that any other counsel want to add?

Mr. Hirtle: Well there is – If your Honor will see fit to enter judgment, we have agreed with the state that we will provide on Parcel A, which is recited in the stipulation, a warranty deed together with a title certificate and with the exception of a lease to the Roncari Company; and we will provide on Parcel C and a small one acre parcel a quick claim deed; and if the court enters judgment, the state will proceed to obtain the check and then

we will have a closing when that money is available for the closing.

The cart before the horse – ass-end-to.

The practice and procedure is (C.G.S. 8-129) performance *first* and then judgment. – *Not* judgment first and then we intend to perform *later* as expounded by Atty. Hirtle above.

And when plaintiff refused their "slush-fund" money and refused to tender any deeds the impostors and impersonators (Attys. Rogin-Hirtle) "told the world" by putting on the Land Records of the Town of East Granby, Connecticut at Vol. 59, p. 658 that: "The Court finds that Augustus J. Simmons has refused to perform."

C.G.S. 8-129 reads very clearly that *AFTER* a statement of compensation and deposit with the Clerk of the Superior Court and has caused a Certificate of Taking to be recorded in the office of the Town Clerk, any Judge of such Court may, upon application and proof, put the agency into peaceable possession of the property.

15. The courts have an inherent and statutory authority to regulate the conduct of attorneys who are officers of the court. "A dual trust is imposed on attorneys at law. They must act with fidelity both to the courts and to their clients, they are bound by canons of ethics which are enforced by the courts . . . it demands on the part of the attorney undivided allegiance, a conspicuous degree of faithfulness and disinterestedness, absolute integrity and utter renunciation of every personal advantage conflicting in any way directly or indirectly with the interests of his client." *State Bar Assn. v Conn. Bank &*

Trust Co., 145 Conn. 222, 234, 140 A2d 863. Further, attorneys in Connecticut have interwoven dual functions as members of the bar and as Commissioners of the Superior Court, and "are charged with using these powers and acting by the authority of the State in the interests of justice." *In re Application of Griffiths*, 162 Conn. 249, 256, 249 A2d 281.

Where there was a "final draft" of a master plan for Bradley International Airport by PURCELL-DELEUW-CATHER, engineers, architects, and planners of New York, NY, submitted to Connecticut Department of Transportation and the four (4) abutting towns surrounding the airport in *MARCH, 1977*, and it was reported at page 29 that: "It is clear that the present land area of the airport is well in excess of the present and future land requirements. Thus it is projected that the future land requirements of the airport would not need any right of way acquisition and expansion. (*Plaintiff's Parcel "A" was not necessary.*) In August, 1977, Assistant Attorney General R. Pelgrift stated in negotiations "*No need for Parcel A.*"

The lease on the Land Records to Roncari was justified and the actions of "Rogin-Hirtle" to *nullify* the lease was a gross and crass abuse of power. The contamination of the Land Records with covenants was unwarranted, unjustified, uncalled for and uncompensated.

On page 43 of the PURCELL-DELEUW-CATHER "final draft" reference was had to the "clear zones" as follows: "At Bradley, major portions of the land under the clear zones are within the airport boundaries and therefore are under the control of the State of Connecticut.

There are exceptions on some of the runways. The clear zone for Runway 6 was considered as being within the airport boundaries. However in January, 1977, the Connecticut Supreme Court ruled that approximately 6 acres within the clear zone is still the property of Mr. Augustus Simmons. (*Plaintiff's Parcel "C" is necessary.*)

Attorneys Rogin-Hirtle had *NO* authority, statutory or otherwise, as private attorneys to, sua sponte, open up and set aside a Superior Court Judgment (Docket #162923) and the *BACKDATING* to November 12, 1964, in the face of the history of this airport case, pursued after submitting a withdrawal from the case on April 19, 1978, putting encumbrance on the Land Records at Vol. 59, p. 419 of East Granby, Connecticut Land Records on April 20, 1978 for attorney fees that were originally agreed to on a contingency basis for *"DAMAGES,"* encumbering the property with "Supplemental Judgments" on June 2 and 5 with court stamps on decrees that never reached the courthouse via notice to necessary parties or return of service to the court is as flagrant as violations can possible be made AND, – THEN – *SANCTIONS* by Hon. Jose Cabranes against plaintiff for his "pertinacious" pursuit for the basic, fundamental JUST COMPENSATION, including damages and interest.

16. Plaintiff has instituted a *MOTION FOR IMPEACHMENT*, Docket No. *Simmons v Wetherall* #163875, in the Connecticut Superior Court on August 1, 1995 that is presently in the "court process" for resolution. The allegations in this memorandum are true, factual, irrefutable and a copy will be submitted to the Clerk, Superior Court at Hartford, Connecticut, to be made a part of the file of *Simmons v Wetherall* #163875, a

1970 damage action where plaintiff cannot obtain damages in the State Court. See *Scherban v Kannell* Civil No. N-75-215 (1976) Newman, J. Judge; also *Textron, Inc. v Wood*, 167 Conn. 334, 342 (1974); *Trumbull v Ehrsam*, 148 Conn. 47, 55-56 (1961); *Anselmo v Cox*, 135 Conn. 78, 81-82 (1948).

17. Plaintiff, having due respect for this Court, does *NOT* intend to pay, to comply with any time period to pay sanctions (fines) to be distributed – to the *GOVERNMENT* and – to the *STATE*.

Plaintiff maintains the Federal District Court is required to act on plaintiff's civil action (95 CV 2198) (RNC) under the provisions and purposes upon which the District Courts of the United States were established.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

CERTIFICATION

Plaintiff hereby certifies that a copy of Reply to Sanction Letter dated February 22, 1996 has been sent first class, postage prepaid this 5th day of March, 1996 to:

Arnold K. Shimelman, Asst. Atty. Gen.
2800 Berlin Turnpike
P. O. Box 317546
Newington, CT 06131-7546

Edward S. Rogin, Sr., Esq.; Robert Hirtle, Jr., Esq.
Rogin, Nassau, Caplan, Lassman, and Hirtle
City Place
Hartford, CT 06103

Chief Clerk
Judicial District Hartford/New Britain at Hartford
95 Washington Street
Hartford, CT 06106

Otto Witt, Esq. and Associates
185 Silas Deane Hwy.
Wethersfield, CT 06109

Clerk, U.S. District Court
450 Main Street
Hartford, CT 06106

/s/ Augustus J. Simmons
Augustus J. Simmons
P. O. Box #1
Windsor, CT 06095
(860) 569-6714

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

Docketing Letter – Civil Case

DATE: April 8, 1996

Augustus J. Simmons SA
P.O. Box 1
Windsor, CT 06095

Re: 96-7336 Simmons v. Transportation

District Court Docket No: 95-cv-2198

Case Manager: **Cynthia Love** Telephone: **(212) 791-1119**

Dear Counsel/Pro se Litigant:

We have today docketed a notice of appeal filed by **Augustus J. Simmons** in the above referenced case as docket number **96-7336.**
This docket number must appear on all documents related to this case which are submitted to this Court. Enclosed are a copy of our docket sheet including the caption page, and instructions regarding the filing and processing of a civil appeal in this Court. Also enclosed is an acknowledgement letter. **Please return the enclosed acknowledgement within ten days of the date of this letter with the following information:**

YOUR CORRECT ADDRESS AND TELEPHONE NUMBER: Please check the enclose attorney listing page of the docket sheet and advise this Court of any incorrect information in writing on the enclosed acknowledgement form. **THE COURT WILL GIVE NOTICE OR SERVE COPIES OF ORDERS TO ONLY ONE COUNSEL PER PARTY (OR GROUP OF COLLECTIVELY REPRESENTED PARTIES.) COUNSEL ARE REQUIRED TO DESIGNATE ON THE ATTACHED ACKNOWLEDGEMENT LETTER A LEAD ATTORNEY TO ACCEPT ALL NOTICE FROM THIS COURT IN THIS APPEAL, WHO WILL, IN TURN, BE RESPONSIBLE FOR NOTIFYING ANY ASSOCIATED COUNSEL.**

CAPTION: Attached is the full caption in this matter taken from the district court docket. Please review this attachment carefully and promptly advise this Court of any discrepancies in writing on the enclosed acknowledgement form. The caption is as the case was originally filed unless the district court has specifically ordered otherwise. N.B. The mere fact that a party has been terminated from the action does not automatically result in the party being deleted from the caption unless the district court entered an order directing that the caption be so amended.

APPELLATE DESIGNATIONS: Please review whether your client is correctly listed as appellant or appellee in the party listing page of the docket sheet and in the caption. Should you believe there is an error, please advise in writing on the acknowledgement form. Timely

submission of the acknowledgment form will be constituted as compliance with the requirement to file a Representation Statement set forth in Rule 12(b) of the Federal Rules of Appellate Procedure.

Please read the enclosed instructions. If you have any questions with regard to this pending appeal, please call the Case Manager whose name is given above.

Sincerely,

GEORGE LANGE III,
CLERK

Enclosures: USCA Docket Sheet, including
Caption Page
Instructions
Acknowledgement Form

APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

DC: 96-7336
DC Dkt: 95-cv-2198
DC Judge: Robert N. Chatigny

Re: Simmons v. Transportation

Docket No. 96-7336

CIVIL APPEALS SCHEDULING ORDER # 1
ADDRESS INQUIRIES TO (212) 791-1107/1119
(Filed Apr. 09, 1996)

Noting that *Augustus J. Simmons* appellant pro se, has filed a Notice of Appeal, and being advised as to the progress of the appeal,

IT IS HEREBY ORDERED that the District Court shall be responsible for filing the record on appeal on or before *April 19, 1996.*

IT IS FURTHER ORDERED that the appellant's brief and appendix be filed on or before *May 9, 1996.* If appellant's brief does not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that the appellee's brief be filed on or before *June 10, 1996.* If appellee's brief does

not exceed 10 pages, it may be filed in memorandum form.

IT IS FURTHER ORDERED that 10 copies of each brief or memorandum shall be filed with the Clerk; however, the filing of a lesser number may be permitted upon application.

IT IS FURTHER ORDERED the the appellee may, without further order of the court, file 10 copies of an appendix to its brief, or 10 copies of an attachment to its memorandum.

IT IS FURTHER ORDERED that the argument of the appeal shall be heard as early as the week of *July 1, 1996.* The appellant pro se and opposing counsel and parties should immediately advise the Clerk by letter of the dates thereafter that they are unavailable for oral argument. The time and place of oral argument shall be separately noticed by the Clerk to the appellant, pro se, and all counsel.

IT IS FURTHER ORDERED that in the event of default by appellant in timely filing the appellant's brief or memorandum and appendix, or upon default by appellant regarding any other provision of this order, the appeal may be dismissed forthwith without further notice and without a motion therefor.

IT IS FURTHER ORDERED that if the appellee fails to file a brief or memorandum within the time directed by this

order, the appellee shall be subject to such sanctions as the court may deem appropriate.

GEORGE LANGE III, Clerk

By: /s/ Elizabeth Munoz
Elizabeth Munoz
Case Manager, USCA

Dated: April 9, 1996

cvprso—frm

APPENDIX H

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square in the City of New York, on the seventeenth day of April one thousand nine hundred and ninety-six.

AUGUSTUS J. SIMMONS,

Plaintiff-Appellant,

V.

DEPARTMENT OF TRANSPORTATION, J. WILLIAM BURNS, COMMISSIONER,

Defendants-Appellees.

Docket No. 96-7336

(Filed Apr. 17, 1996)

A scheduling order having been entered in error on April 9, 1995,

IT IS ORDERED that the said order be and it hereby is vacated.

GEORGE LANGE, III Clerk

By: /s/ Elizabeth Munoz
Elizabeth Munoz
Case Manager

APPENDIX I

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

AUGUSTUS J. SIMMONS, PLAINTIFF

VS

J. WILLIAM BURNS, COMMISSIONER
CONNECTICUT DEPARTMENT
OF TRANSPORTATION

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

NATURE OF THE ACTION

Question of whether property was taken without due process or just compensation constitutes a "federal question" within jurisdictional statute 28 USCA § 1331; U.S.C.A. Const. Amends. 5, 14, § 1.

JURISDICTION

This action arises under the Fifth Amendment to the Constitution of the United States, Section Four, as made applicable to the states through the Fourteenth Amendment, Section One, as hereinafter more fully appears.

The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000.00).

Therefore, under the authority granted in 28 USC § 1331 (1964) jurisdiction is properly vested in this court.

SITUS OF "TAKING"

Plaintiff seeks damages for a "taking" of 346.50 foot "frontage" of real property designated as Parcel "A" on Town of East Granby, Connecticut Land Records at Vol. 40, p. 192 and of the right to proper ingress and egress to Route 20, a federal-aid highway, from a 6.7 acre parcel of land owned and in the process of development by Plaintiff. (Pl. Ex. #1.)

Said Parcel "A" containing 6.7 acres is more particularly bounded and described as follows:

A certain piece or Parcel of land situated in the Town of East Granby, County of Hartford and State of Connecticut being known as Parcel "A" on a map entitled, "Property of Anastasia Simmons, East Side-Rainbow Road, East Granby, Connecticut Scale 1 in. = 60 feet. Date October 1964, W. M. Alford Civil Engineer, Windsor, Connecticut A.J.S.", which map is on file in the Town Clerk's office in said Town of East Granby.

Said Parcel A containing 6.7 acres is more particularly bounded and described as follows:

Beginning at a point on the easterly edge of a dirt road, which point is identified by a stake and is one hundred eighteen (118') feet, more or less, from the intersection of this dirt road and Route No. 20 in the Town of East Granby, which point is further identified as being the northwesterly corner of property now or formerly of Charles Comer;

Thence N 51 degrees 39' 50" E along land now or formerly of Roncari Industries, Inc. and a dirt road, seven-hundred forty-six (746') feet to a point;

Thence S 29 degrees 09' 50" E along land now or formerly of the State of Connecticut, one hundred ninety-nine and fifty one-hundredths (199.50') feet to a point;

Thence S 28 degrees 59' 40" W along land now or formerly of Anastasia Simmons, conveyed on November 11, 1964 to Charles Simmons, nine hundred forty-two and seventy-six one-hundredths (942.76') feet to a point;

Thence N 47 degrees 48' 10" W along the northeasterly line of Connecticut Route No. 20 seven and twenty-one one-hundredths (7.21') feet to a point;

Thence N 31 degrees 35' 20" W along the northeasterly side of Connecticut Route No. 20, two hundred twenty-three and eighty-seven one-hundredths (223.87') feet to a point;

Thence N 31 degrees 40' 15" W along the northeasterly side of Connecticut Route No. 20, one hundred fifteen and forty-two one-hundredths (115.42') feet to a point;

Thence N 48 degrees 54' 00" E along the easterly line of land now or formerly of Charles Comer, one hundred twenty-six and fifty-two one-hundredths (126.52') feet to a point;

Thence N 40 degrees 50' 00" W along the northeasterly line of land now or formerly of Charles Comer, two hundred ten and thirty-four one-hundredths (210.34') feet to the point of beginning.

COMPLAINT

Defendant, Highway Division of Connecticut Department of Transportation advertised and awarded a contract, Project #39-77 (1989) to Della Construction in July, 1989 (Pl. Ex. #2) to *"WIDEN"* Route 20, a/k/a Rainbow Road, in the Town of East Granby, Connecticut, in the vicinity of Bradley International Airport (Pl. Ex. #3) from two (2) lanes to four (4) lanes requiring the "taking" of an additional eighteen (18) foot right of way of private property – on both sides of Route 20.

The regulations require a right of way sufficient to accommodate a border area between the roadway and the right of way line wide enough to serve several purposes including provision of a buffer space between pedestrians and vehicular traffic, sidewalk space, and an area for both underground and above ground utilities such as traffic signals, parking meters, and FIRE HYDRANTS. A portion of the border area would serve SNOW STORAGE and aesthetic features such as grass and other landscaping features.

Traffic signals, utility poles, FIRE HYDRANTS and other utilities should be placed as far back of the curb as practical for safety reasons.

* * *

On February 16, 1989, Mr. A. J. Simmons was asked to accompany William Nugent of Orange, CT, Kaye Horn of Norwich, CT and John Manfredo of Bloomfield, CT, all three associated with the Connecticut Highway Department Appraisal Section for an on-site evaluation.

NO information, no figures, were submitted as a result of the on-site evaluation and at a subsequent date, Plaintiff Simmons was informed – *"THERE WAS NO NEED FOR ANY OF THE SIMMONS FRONTAGE,"* notwithstanding the highway line abuts the private property line. (Pl. Ex. #4.)

Bituminous concrete aprons at the two (2) curb cut-outs were not installed – for reasons they would have to trespass on private property, thus, resulting in "pot holes" at curb openings making ingress and egress extremely difficult and in need of constant repair.

The FIRE HYDRANT to be relocated (between Station 46 and 47) was – eliminated – rather than relocating on the right of way that was never acquired. Insurance premiums are determined partially by the proximity of fire hydrants and because the necessary right of way was not acquired, the hydrant was eliminated. The particular hydrant (between Station 46 and 47) was on the "airport side" of the highway, was the closest hydrant to the "clear zone" at the end of primary Runway 6 of the airport, and, airport statistics clearly show the highest incidence of aircraft mishaps are at the end of runways.

The SNOW STORAGE SHELF that is required when the highway designer is determining right of way widths was provided for with each and every property owner the entire length of the widening – with one exception – the 346.50 frontage of "Simmons" forcing the owner to pay taxes for a snow shelf for the Connecticut Highway Department.

DRAINAGE of highway surface water onto private property through the cut-out forced the owner into considerable expense to procure several cubic yards of gravel and stone dust to raise the elevation to a level of self-protection against the failure of the Highway Department to prevent such damage.

FEDERAL QUESTION

The applicable rule regarding federal jurisdiction under § 1331, Title 28, United States Code, of actions such as that at bar is that the question of whether property was taken without due process of law or just compensation constitutes a "federal question" within the meaning of

that statute. *Cuyahoga River Power Co. v City of Akron*, 240 U.S. 462, 36 S. Ct. 402, 60 L. Ed. 743; *Raymond v Chicago Union Traction Co.*, 207 U.S. 20, 28 S. Ct. 7, 52 L. Ed 78; *Foster v Herley*, (Ca. 6) 330 F2d 87; *Foster v City of Detroit* (Ca. 6) 405 F2d 138; *Haczela v City of Bridgeport* (D. Conn.) 299 F. Supp. 709, 712; *Sayre v United States*, (N. D. Ohio) 282 F. supp. 175.

CONCLUSION

Plaintiff claims a right under the Fourteenth Amendment to the United States Constitution not to be deprived of his property without due process of law and that the acts of the defendant constituted such a deprivation.

WHEREFORE

The action of the defendant as set forth in the preceding paragraphs is in violation of plaintiff's rights as guaranteed by Amendment Fourteen, Section One of the Constitution of the United States. Further, defendant by taking plaintiff's property without the payment of just compensation, violated plaintiff's rights as guaranteed by Amendment Five, Section Four and made applicable to the States through Amendment Fourteen, Section One of the Constitution of the United States.

Plaintiff therefore requests damages in the sum of $200,000.00 dollars.

LIMITED ACTION

This action is specifically directed to the "frontage"

of Parcel "A" and is not, does not include unconstitutional encroachment violations by federal agencies in the rear portion of Parcel "A" nor does it embrace unconstitutional violations of Parcel "C" and "D" that is in other litigation.

Respectfully submitted,

/s/ Augustus J. Simmons
Augustus J. Simmons
P.O. Box #1
Windsor, CT 06095
(860) 569-6714